

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Trespass Civil
Citation No. 143434 – Todd Leslie
Scheuble

**RECOMMENDATION
THAT CITATION BE AFFIRMED**

This matter came before Administrative Law Judge Manuel J. Cervantes (ALJ) on a Notice of Hearing, filed December 5, 2012. The telephone hearing was held on January 24, 2013.

Conservation Officer (Officer) Greg Verkuilen, Jerome Poland (Poland), and Mark Aument (Aument) appeared as witnesses on behalf of the Department of Natural Resources (Department or DNR). Todd L. Scheuble (Appellant) appeared on his own behalf.

FINDINGS OF FACT

1. Jerome Poland is the adult son of the landowner Jerome Poland, Sr. in Crow Wing County, Minnesota. On the afternoon of November 2, 2012, Poland was traveling with a friend, Mark Aument, north bound on Minnesota Highway 18, south of County Road 10.¹

2. Poland Sr. owns the relevant land, specifically, the land south of County Road 10 and east of Highway 18. Poland and Aument saw a light gray late model Ford pickup truck parked off Highway 18 near the tree-line on Poland's property. They drove past the vehicle and pulled over north of the truck. Poland and Aument observed Appellant step out of his vehicle and walk east into the wooded area. He was in the woods for approximately 25 minutes.²

3. Poland called his father via cell phone to inquire whether he knew anything about the occupant of the truck. Poland Sr. denied any knowledge of the person and indicated that he had not given him permission to be on the property. The Department was called and a conservation officer was dispatched to their location.³

¹ Testimony (Test.) of Poland and Aument.

² *Id.*

³ *Id.*, Test. of Officer.

4. In the meantime, Aument turned his vehicle around and approached the truck from the south on Highway 18. When Appellant returned from the woods, Poland asked him why he was on the property. Appellant said he was planning to hunt deer there the next day. Poland informed Appellant that he did not have permission to be on the property and that he was trespassing.⁴

5. Appellant explained that he had hunted on the property in the past. It was his erroneous belief that the property had been sold to a new owner and that hunting would be permitted.⁵

6. As of the summer of 2012, there were six “No Trespassing” signs posted at 400 foot intervals along Highway 18 south of County Road 10 on the western edge of Poland’s property.⁶ By November 2, 2012, three of the No Trespassing signs had been removed by person(s) unknown, including two signs in the proximity of where Appellant parked. The three remaining signs were still posted north and south of Appellant’s location.⁷ The Polands consistently posted their property with “No Trespassing” signs.⁸ The missing “No Trespassing” signs were replaced later on the afternoon of November 2, 2012.⁹

7. Appellant had already left when the Officer arrived on the scene. The Officer interviewed Poland and Aument and left.¹⁰

8. On November 18, 2012, the Officer recognized the truck described to him on November 2 by Poland on another property in the area. The Officer approached Appellant who had been hunting. Appellant indicated that he had hunted the Poland property before. The Officer issued the trespass citation in question.¹¹

9. At the hearing, Appellant indicated there was a placard made of plywood near the location where he had parked, but no “No Trespassing” sign was posted there at that time. He further stated that he did not intend to trespass on November 2, 2012.¹²

CONCLUSION OF LAW

1. The Administrative Law Judge and Commissioner of Natural Resources have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 97A.201.

2. The Office of Administrative Hearings gave proper and timely notice of the hearing in this matter.

⁴ Poland Test.

⁵ Appellant (App.) Test.

⁶ Poland Test.

⁷ *Id.*

⁸ App. and Officer Test.

⁹ Poland and App. Test.

¹⁰ Poland and Officer Test.

¹¹ Officer Test.

¹² App. Test.

3. The Department of Natural Resources and the Office of Administrative Hearings has complied with all procedural requirements of law and rule.

4. Minn. Stat. § 97B.001, subd. 4(b), in relevant part, states, “[t]he owner, occupant, or lessee of private land...may prohibit outdoor recreation on the land by posting signs once each year that state “no trespassing” or similar words....”

5. The Poland property was properly posted “no trespassing” in 2012.

6. Minn. Stat. § 97B.001, subd. 4(a), in relevant part, states “a person may not enter, for outdoor recreational purposes, any land that is posted under this subdivision without first obtaining permission of the owner, occupant, or lessee.”

7. Appellant did not request nor did he have permission to go upon the Poland property in Crow Wing County on November 2, 2012. Intent is not an element of trespass nor is it a defense.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Natural Resources **AFFIRM** Citation No. 143434 issued to Todd Leslie Scheuble on November 18, 2012.

Dated: January 31, 2013

/s/ Manuel J. Cervantes

MANUEL J. CERVANTES
Administrative Law Judge

Reported: Digitally recorded

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The Commissioner must send a copy of the final decision to Todd Leslie Scheuble. The final order of the Commissioner may be appealed pursuant to Minn. Stat. §§ 14.63-14.69. If the Commissioner fails to act within 90 days after the record closes, this recommendation will become the final decision in this matter.

MEMORANDUM

The issue in the matter is whether Appellant trespassed upon the Poland property in Crow Wing County on November 2, 2012. The Appellant denies that he trespassed. The record is clear that the Poland land was properly posted. Poland Sr. had not given Appellant permission to go upon his land or to hunt from there. Appellant admitted that he was on Poland's land, but does not claim that he had permission. Instead, he claims that he did not intend to trespass. This is no defense.

M. J. C.